

[Federal Register: July 28, 1998 (Volume 63, Number 144)]
[Rules and Regulations]
[Page 40175-40180]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr28jy98-7]

=====

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

30 CFR Part 602; 43 CFR Part 3195

[WO-130-1820-00-24 1A]
RIN 1004-AD24

Helium Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim rule with request for comments.

[[Page 40176]]

SUMMARY: The Bureau of Land Management (BLM) is issuing an interim rule to implement the requirements of the Helium Privatization Act of 1996. This rule establishes the procedures of the helium program and defines the obligations of Federal helium suppliers and Federal helium users. Also, this interim rule removes the Bureau of Mines regulations governing helium distribution contracts because this responsibility is now under BLM's jurisdiction.

DATES: This rule is effective on July 28, 1998. Written comments must be received on or before August 27, 1998.

ADDRESSES: Comments: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the Internet to WOCComment@wo.blm.gov. Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC. See SUPPLEMENTARY INFORMATION for more detail on comment procedures.

FOR FURTHER INFORMATION CONTACT: Shirlean Beshir, Regulatory Affairs Group (WO-630), Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW, Washington, DC 20240; telephone (202) 452-5033 (Commercial or FTS) and Timothy R. Spisak, (806) 324-2602 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Why Is BLM Issuing These Regulations?

BLM is issuing these regulations to implement the requirements of the Helium Privatization Act of 1996, Public Law 104-273 (the Act), and to remove the Bureau of Mines regulations at 30 CFR 602 governing helium distribution contracts because this responsibility is now under BLM's jurisdiction. BLM is adding these interim regulations as a new Part 3195 to BLM's oil and gas regulations.

What Are the Primary Requirements of the Helium Privatization Act?

The Act primarily requires that:

- <bullet> BLM discontinue producing, marketing, and selling refined helium.

- <bullet> Persons who supply a major helium requirement to Federal agencies must contract with BLM to purchase an equivalent amount of crude helium from BLM.

- <bullet> BLM use a legislatively mandated formula for determining the minimum price for crude helium. '

How Does the Helium Privatization Act Set the Price for Helium?

The Act uses a formula by which income from crude helium sales is to repay the sizeable debt the Federal Helium Program owes to the United States Treasury.

Who Administers the Federal Helium Program?

The Federal Helium Program is administered by the Department of the Interior, Bureau of Land Management, Helium Operations, which is responsible for the production, conservation, sale, and distribution of helium. Helium Operations was transferred from the Bureau of Mines (BOM) to BLM in 1996 by the Secretary of the Interior when BOM was abolished. Unlike many other BLM programs, this program does not deal with lands or minerals issues in their traditional sense. The Helium Operations Headquarters in Amarillo, Texas, provides management, engineering, and support services for Federal facilities and pipelines in Texas, Oklahoma, and Kansas, regardless of whether or not the helium involved is produced from Federal lands.

How Is the Federal Helium Program Financed?

The Federal Helium Program is financed by income from the sale, storage, and analysis of helium, and not by appropriations from Congress. Any income in excess of that needed for operations is turned over to the Treasury. Over the last 3 years, an average of about \$8 million per year has been returned to the Treasury.

From Whom Must Federal Agencies Purchase Their Major Helium Requirements?

The Department of Defense, Department of Energy, National Aeronautics and Space Administration, other Federal agencies and their contractors must purchase their major helium requirements from ``Federal helium suppliers.'' Federal helium suppliers are persons who have entered into contracts to purchase from BLM an amount of crude

helium equivalent to the amount of refined helium supplied to a Federal agency. These contracts are called In-Kind Crude Helium Sales Contracts. This interim rule establishes procedures governing the sale of crude helium to Federal agencies with major helium requirements. The In-Kind Crude Helium Sales Contracts establish additional terms of the relationship and responsibilities of Federal helium buyers, Federal helium suppliers, and BLM.

What Are the Major Differences Between the Old BOM Regulations and These Regulations?

Old BOM regulations	These regulations
The price of the helium was not set by regulation. Refined helium sales prices were set by BOM.	The minimum crude helium price is mandated in the Act and includes BLM's cost to administer crude helium sales.
The helium contract language was in the regulations.	The contract language is not in the new regulations, so that BLM will be able to revise the contract language when it is necessary, without formal rulemaking.
The term ``helium distribution contractor'' meant a private helium supplier who is an authorized refined helium distributor.	The new term ``Federal helium supplier'' means a private helium supplier who is authorized to sell refined helium to a Federal agency or agency contractor and who is required to purchase an equivalent amount of crude helium from BLM.
A ``Major helium requirement'' was 5,000 cubic feet per month.	A ``Major helium requirement'' is 200,000 cubic feet per year. To reduce the administrative burden on smaller agencies and suppliers, BLM raised the helium volume that is considered a major helium requirement. This allows Federal helium users to procure ``nonmajor'' helium requirements more economically and efficiently. The higher threshold still covers over 90 percent of the Federal refined helium delivered over the last three years.

The ``helium use location'' was not an issue.

By specifying expected helium requirements by helium use location, consolidated helium purchases are not as likely to push nonmajor helium requirements into the more expensive major helium requirement category.

The helium-buying agency was required to identify in procurement documents when ``Bureau of Mines Helium'' was required so that the private helium distributor would know that they had to account for the helium sale.

The helium-buying agency must clearly identify which helium use locations have been determined to need a major helium requirement so that the helium supplier can accurately charge the buyer and report the major helium requirement sales to BLM.

The Helium Distribution Contractors were required to report annually on the refined helium sales/purchases made to and from Federal agencies or other Helium Distribution Contractors.

In addition to annual reporting by Federal helium suppliers, quarterly reporting by Federal helium suppliers and buyers is instituted. The quarterly reports will help BLM verify refined helium sales made to Federal agencies by Federal helium suppliers.

Refined helium shortages for Federal needs were minimized because the Federal Government, acting as its own helium refiner, had adequate back-up procedures and equipment.

Since the Act ordered the Government-owned helium refinery to be shut down, BLM cannot directly prevent helium shortages. These regulations require that, under an In-Kind Crude Helium Sales Contract, the Federal Government has priority over non-government refined helium needs.

Procedural Matters

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

In accordance with 5 U.S.C. 553(b) (B), we find good cause exists for waiving the general notice of proposed rulemaking because such notice is impracticable. The BLM needs to have these regulations in effect at the earliest possible date because Congress mandated that the transition from the BLM supplying refined helium to Federal agencies to replenishing Federal helium suppliers' refined helium with crude helium occur within 18 months of the enactment of the Act (i.e., April 9, 1998), and the Helium Distribution Contracts under prior regulations have expired. Therefore, these new regulations, which carry out the Congressional mandate, must be in place to provide guidance to Federal helium users in their purchases of major helium requirements.

Nevertheless, BLM will consider all timely-filed comments. Furthermore, under 5 U.S.C. 553(d)(3), there is good cause for making this interim rule effective immediately. No private entity needs to reorder its affairs to come into compliance with this rule, but only is affected as it contracts with BLM. In addition, Congress has mandated that these changes occur within 18 months of enactment.

Comments

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the Internet to WOCComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ``attn: AD24'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly on (202) 452-5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Eastern time, Monday through Friday, except holidays. BLM will also post all comments on its home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name, home street address, Internet address, or personal telephone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC.

Executive Order 12866

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. This interim rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The interim rule merely provides the BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about \$15 million annually. The crude helium sales required by legislation replace the BLM refined helium sales being discontinued by the same legislation. The interim rule adds a small administrative cost to track crude and refined helium sales. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule merely fulfills the requirements of the Act, and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This interim rule outlines the reporting requirements of Federal helium users and Federal helium suppliers. In addition, this interim rule raises refined helium sales thresholds from those contained in the prior regulations. The prior provisions would have required more small refined helium distributors to participate in refined helium sales reporting and subsequent crude helium purchases.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Department has determined that this interim rule is not a major rule

[[Page 40178]]

under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This interim rule is not a major rule because total annual helium sales under the Act are not likely to exceed \$15 million, well below the \$100 million statutory threshold. Furthermore, any increases in cost will be borne by the Federal Government and in any event are mandated by the Act. Any effect on competition is the result of the Act. The interim rule merely provides the BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The crude helium sales required by legislation replace the BLM refined helium sales being discontinued by the same legislation. The interim rule adds a small administrative cost to track crude and refined helium sales.

Unfunded Mandates Reform Act

This interim rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The interim rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required. The interim rule merely provides the BLM a means to document and bill sales of crude helium to Federal helium suppliers based on their sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about \$15 million annually. The crude helium sales required by the Helium Privatization Act of 1996 would replace the BLM refined helium sales being discontinued by the same legislation. The interim rule adds a small administrative cost to track crude and refined helium sales.

Executive Order 12630

In accordance with Executive Order 12630, the interim rule does not have significant takings implications. A takings implication assessment is not required. Since the interim rule defines the obligations arising under future contracts, there will be no private property rights impaired as a result.

Executive Order 12612

In accordance with Executive Order 12612, the interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This interim rule does not impose any obligations on any other Government nor preempt any regulatory authority of any State.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this interim rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The information required by these regulations is the same as the information required by the In-Kind Crude Helium Sales Contracts. The information collections contained in the In-Kind Crude Helium Sales Contracts have been approved by OMB under Approval No. 1004-0179. The In-Kind Crude Helium Sales Contracts require Federal helium suppliers and Federal agencies to which the Federal helium suppliers sell the helium to provide specific information to BLM.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. However, BLM has prepared an Environmental Assessment (EA) in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see ADDRESSES), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Comments section above, or contact us directly.

Author. The principal author of this rule is Timothy Spisak, Helium Operations, Bureau of Land Management, Amarillo, Texas, (806) 324-2602 (Commercial or FTS), assisted by Shirlean Beshir of BLM's Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240; Telephone: (202) 452-5033 (Commercial or FTS).

List of Subjects

30 CFR Part 602

Government contracts, helium, reporting and recordkeeping requirements.

43 CFR Part 3195

Government contracts, mineral royalties, oil and gas exploration, public lands-mineral resources, reporting and recordkeeping requirements, and surety bonds.

Dated: July 13, 1998.
Sylvia V. Baca,
Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, under the authority of 5 U.S.C. 301 and for the reasons stated above, BLM amends 30 CFR Chapter VI and 43 CFR Chapter II as follows:

30 CFR CHAPTER VI

PART 602--[REMOVED]

1. Remove 30 CFR part 602.

43 CFR CHAPTER II

2. Add 43 CFR part 3195 to read as follows:

PART 3195--HELIUM CONTRACTS

Sec.

General Information

- 3195.10 What is the purpose of these regulations?
- 3195.11 What terms do I need to know to understand this subpart?
- 3195.12 What is an In-Kind Crude Helium Sales Contract?
- 3195.13 If I am a Federal helium supplier or buyer, what reports must I submit to BLM?
- 3195.14 How should I submit reports?

Federal Agency Requirements

- 3195.20 Who must purchase major helium requirements from Federal helium suppliers?
- 3195.21 When must I use an authorized Federal helium supplier?
- 3195.22 When must my contractors or subcontractors use an authorized Federal helium supplier?
- 3195.23 How do I get a list of authorized Federal helium suppliers?
- 3195.24 What must I do before contacting a non-Federal helium supplier for my helium needs?
- 3195.25 What information must be in my purchase order/contract for a major helium requirement?
- 3195.26 What information must I report to BLM?
- 3195.27 What do I do if my helium requirement becomes a major helium requirement after the initial determination has been made?

Federal Helium Supplier Requirements

- 3195.30 How do I become a Federal helium supplier?
- 3195.31 What are the general terms of an In-Kind Crude Helium Sales Contract?
- 3195.32 Where can I find a list of Federal agencies that use helium?
- 3195.33 What information must I report to BLM?
- 3195.34 What happens to my Helium Distribution Contracts?

3195.35 What happens if I have an outstanding obligation to purchase refined helium under a Helium Distribution Contract?
3195.36 What happens if there is a shortage of helium?

[[Page 40179]]

3195.37 Under what circumstances can BLM terminate me as an authorized Federal helium supplier?

Authority: 50 U.S.C. 167a.

General Information

Sec. 3195.10 What is the purpose of these regulations?

The purpose of these regulations is to establish procedures governing the sale of helium to Federal agencies with major helium requirements. In order to sell a major helium requirement to a Federal agency, a Federal helium supplier must be under contract with BLM to purchase from BLM an amount of crude helium equivalent to the amount of refined helium it has supplied to the Federal agency.

Sec. 3195.11 What terms do I need to know to understand this subpart?

To understand this subpart you need to know that:

BLM means the Bureau of Land Management, Helium Operations, United States Department of the Interior, Amarillo, TX 79101.

Buyer means anyone who is purchasing refined helium for a Federal agency or Federal agency contractor.

Crude helium means a helium-gas mixture containing no more than ninety-nine (99) percent helium by volume.

Federal agency means any department, independent establishment, commission, administration, foundation, authority, board, or bureau of the United States, or any corporation owned, controlled, or in which the United States has a proprietary interest, as these terms are used in 5 U.S.C. 101-105; 5 U.S.C. 551(1); or in 18 U.S.C. 6, but does not include Federal agency contractors.

Federal helium supplier means a private helium merchant who has an In-Kind Crude Helium Sales Contract with an effective date of January 1, 1998, or later, with BLM, and who has helium available for sale to:

- (1) Federal agencies; or
- (2) Private helium purchasers for use in Federal Government contracts.

Helium means the element helium regardless of its physical state.

Helium use location means the location where the major helium requirement will be used.

Like (equivalent) amount of crude helium means the amount of crude helium measured at a pressure of 14.65 pounds per square inch absolute (psia) and a temperature of 60 degrees Fahrenheit (F), and rounded up to the nearest thousand (1,000) cubic feet, that is equivalent to a specified amount of refined helium measured at 14.7 psia and 70 degrees Fahrenheit.

Major helium requirement means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) of gaseous helium or 7510 liters of liquid helium delivered to a helium use

location per year.

Standard cubic foot (SCF) means the volume of gaseous helium occupying one cubic foot at a pressure of 14.7 psia and a temperature of 70 degrees Fahrenheit. One liter of liquid helium is equivalent to 26.63 scf of gaseous helium. One U.S. gallon of liquid helium is equivalent to 100.8 scf of gaseous helium. One pound of liquid helium is equivalent to 96.72 scf of gaseous helium. If BLM approves, you may use appropriate gaseous equivalents of volumes of helium mixtures different from these figures.

Sec. 3195.12 What is an In-Kind Crude Helium Sales Contract?

It is a written contract between BLM and a Federal helium supplier requiring that whenever a supplier sells a major helium requirement to a Federal agency or its contractors, the supplier must purchase a like amount of crude helium from BLM.

Sec. 3195.13 If I am a Federal helium supplier or buyer, what reports must I submit to BLM?

In accordance with the In-Kind Crude Helium Sales Contract:

(a) Federal helium suppliers and buyers must report the total itemized quarterly deliveries of major helium requirements within 45 calendar days after the end of the previous quarter (see Secs. 3195.26 and 3195.33).

(b) Federal helium suppliers must report the annual cumulative helium delivery report by November 15 of each year (see Sec. 3195.33).

Sec. 3195.14 How should I submit reports?

You must submit reports by:

- (a) Mail;
- (b) Fax;
- (c) E-mail; or
- (d) Any other method to which you and BLM agree.

Federal Agency Requirements

Sec. 3195.20 Who must purchase major helium requirements from Federal helium suppliers?

- (a) The Department of Defense;
- (b) The National Aeronautics and Space Administration;
- (c) The Department of Energy;
- (d) Any other Federal agency; and
- (e) Federal agency contractors.

Sec. 3195.21 When must I use an authorized Federal helium supplier?

You must use an authorized Federal helium supplier for any major helium requirement.

Sec. 3195.22 When must my contractors or subcontractors use an authorized Federal helium supplier?

An authorized Federal helium supplier must be used whenever the contractor or subcontractor uses a major helium requirement in performance of a Federal contract.

Sec. 3195.23 How do I get a list of authorized Federal helium suppliers?

You must request the list from BLM in writing.

Sec. 3195.24 What must I do before contacting a non-Federal helium supplier for my helium needs?

You must make an initial determination about the annual helium demand for each helium use location for the expected life of the purchase order/contract. If the annual helium demand for a helium use location is a major helium requirement, it must be supplied by a Federal helium supplier.

Sec. 3195.25 What information must be in my purchase order/contract for a major helium requirement?

A purchase order/contract must state each helium use location and whether the anticipated demand exceeds the amount defined as a major helium requirement at each helium use location.

Sec. 3195.26 What information must I report to BLM?

In accordance with the In-Kind Crude Helium Sales Contract, within 45 days of the end of each quarter, you must report to BLM (see Sec. 3195.13) the following:

(a) The name of the company from which you purchased a major helium requirement;

(b) The amount of helium you purchased and the date it was delivered; and

(c) The helium use location.

Sec. 3195.27 What do I do if my helium requirement becomes a major helium requirement after the initial determination has been made?

As soon as you determine that your forecasted demand of helium for a particular helium use location will become a major helium requirement, you must purchase your helium (for that helium use location) from an authorized Federal helium supplier for the remainder of the purchase order/contract as a major helium requirement.

Federal Helium Supplier Requirements

Sec. 3195.30 How do I apply to become a Federal helium supplier?

In order to become a Federal helium supplier,

[[Page 40180]]

(a) You must be a private helium merchant and demonstrate to BLM in writing that you have:

(1) Adequate financial resources to pay for BLM helium and helium related services;

(2) Adequate facilities and equipment to meet delivery schedules and quality standards required by Federal helium buyers; and

(3) A satisfactory record of performance in the distribution of helium or other compressed gases.

(b) You must fill out and execute BLM's In-Kind Crude Helium Sales Contract and submit it to BLM for approval.

Sec. 3195.31 What are the general terms of an In-Kind Crude Helium Sales Contract?

A BLM helium In-Kind Crude Helium Sales Contract requires you to:

(a) Deliver helium to a Federal agency specified helium use location;

(b) Purchase crude helium from BLM equivalent to the amount of refined helium you sold to Federal agencies;

(c) Report to BLM the amount of refined helium you sold to Federal agencies; and

(d) Maintain records for inspection and audit by BLM in accordance with 30 U.S.C. 17.13(b).

Sec. 3195.32 Where can I find a list of Federal agencies that use helium?

You must request from BLM in writing the list of Federal agencies that have purchased a major helium requirement during the past year.

Sec. 3195.33 What information must I report to BLM?

(a) In accordance with the In-Kind Crude Helium Sales Contract, within 45 days of the end of each quarter, you must report to BLM (see Sec. 3195.13) the following:

(1) The name of the Federal agency to which you supplied helium;

(2) The amount of helium you delivered and the date you delivered it; and

(3) The helium use location.

(b) In accordance with the In-Kind Crude Helium Sales Contract, by November 15 of each year, you must report to BLM (see Sec. 3195.13) the following:

(1) The name of the Federal agency to which you supplied helium; and

(2) The cumulative amount of helium delivered during the previous fiscal year for each Federal agency.

Sec. 3195.34 What happens to my Helium Distribution Contracts?

Helium Distribution Contracts between BLM and a helium distributor have been terminated. You must execute an In-Kind Crude Helium Sales Contract before you sell a major helium requirement to a Federal agency.

Sec. 3195.35 What happens if I have an outstanding obligation to purchase refined helium under a Helium Distribution Contract?

If you were obligated to buy refined helium under a Helium Distribution Contract, your In-Kind Crude Helium Sales Contract requires you to buy an equivalent amount of crude helium in lieu of that obligation.

Sec. 3195.36 What happens if there is a shortage of helium?

If there is a shortage of helium (either company specific or industry wide) which would cause you to defer helium shipments to a buyer, you must, in accordance with your In-Kind Crude Helium Sales Contract, give the United States priority over non-government requirements.

Sec. 3195.37 Under what circumstances can BLM terminate me as an authorized Federal helium supplier?

BLM has the authority to terminate you as an authorized Federal helium supplier for:

- (a) Nonpayment for a like amount of crude helium;
- (b) Not reporting helium deliveries according to your In-Kind Crude Helium Sales Contract and these regulations;
- (c) Not taking delivery of a purchase of a like amount of crude helium not covered by a valid helium storage contract; or
- (d) Any other breach of contract or violation of these regulations.

[FR Doc. 98-20003 Filed 7-27-98; 8:45 am]
BILLING CODE 4310-84-P